

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

| | | |
|------------------------------------|---|----------------------------|
| ROBERT CHESTNUT, |) | |
| |) | |
| Petitioner |) | |
| |) | |
| v. |) | Civil No. 03-48-B-W |
| |) | |
| WARDEN, MAINE STATE PRISON, |) | |
| |) | |
| Respondent |) | |

RECOMMENDED DECISION ON MOTION TO DISMISS

Pro se petitioner Robert Chestnut moves to dismiss his habeas petition. *See* Motion To Dismiss (“Motion”) (Docket No. 11). In response, the State asks that the petition be dismissed with prejudice or, alternatively, that the Motion be denied. *See* Response to Petitioner’s Motion To Dismiss His Petition Dated June 16, 2003 and Filed June 18, 2003 (“Response”) (Docket No. 12). I recommend that the Motion be granted and the petition dismissed without prejudice.

Federal Rule of Civil Procedure 41(a)(2) provides that, except in circumstances not here relevant, “an action shall not be dismissed at the plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper. . . . Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.”¹ The rule’s purpose “is to permit the plaintiff, with approval of the court, voluntarily to dismiss an action as long as no other party will be prejudiced.” *Doe v. Urohealth Sys., Inc.*, 216 F.3d 157, 160 (1st Cir. 2000) (citations and internal quotation marks omitted). Factors relevant to analysis include “the defendant’s effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and the

¹ I apply Rule 41(a)(2) pursuant to Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, which provides: “The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with these rules, may be applied, when appropriate, to petitions filed under these rules.”

fact that a motion for summary judgment has been filed by the defendant.” *Id.* (citations and internal quotation marks omitted); *see also, e.g., Clark v. Tansy*, 13 F.3d 1407, 1411 (10th Cir. 1993) (weighing first three of these factors in habeas context). However, “courts need not analyze each factor or limit their consideration to these factors.” *Urohealth*, 216 F.3d at 160.

The State concedes that only one relevant factor “significantly militates against the granting of Petitioner’s motion or alternately granting it *without prejudice* – namely, his explanation for the need to seek a voluntary dismissal.” Response at 3-4 (footnote omitted). Inasmuch as (i) the key consideration in assessing whether a Rule 41(a)(2) motion should be granted is whether the dismissal would prejudice the defendant/respondent, *see, e.g., Clark*, 13 F.3d at 1411; *Schwarz v. Folloder*, 767 F.2d 125, 129 (5th Cir. 1985), (ii) the State can point to no significant prejudice arising from the dismissal of the instant petition without prejudice, and (iii) the petitioner has chosen to persist in seeking voluntary dismissal despite my earlier caution that he “consider the possible consequences of such a dismissal on his ability to reassert the claims in issue,” *see* Order on Motion for Bail (Docket No. 10) at 1, I recommend that the Motion be **GRANTED** and the petition be dismissed without prejudice.

NOTICE

A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court’s order.

Dated this 28th day of July, 2003.

David M. Cohen
United States Magistrate Judge

ROBERT CHESTNUT

represented by **ROBERT CHESTNUT**
MAINE STATE PRISON

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V.

Defendant

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